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18 December 1981

NFAC 8305-81

MEMORANDUM FOR: Director of Central Intelligence  
Deputy Director of Central Intelligence

VIA: Director, National Foreign Assessment Center  
Director of Global Issues

FROM:   
Chief, Geography Division, OGI

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SUBJECT: Possible NSC Meeting on the Law of the Sea

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1. Action Requested: None. This memorandum provides information on the attached Law of the Sea (LOS) Memorandum to the President, which is being transmitted to the NSC today. There may be an NSC meeting on this policy decision issue early next week.

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2. Background: The LOS Memorandum for the President presents a basic issue for policy decision--should the United States remain in the Third United Nations Conference on LOS and seek changes in the Draft Convention consistent with our LOS interests or should it withdraw from the negotiations? The Memorandum includes the findings of a six-month interdepartmental LOS policy review and two US policy options, which were agreed upon at the 24 November Senior Interdepartmental Group meeting. More detailed analysis of the pros and cons and implementation of the options have been added to the Memorandum at Secretary Haig's instructions.

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In sum, the Memorandum concludes that the non-seabeds sections of the Draft LOS Convention are acceptable and worth attaining, but that the major elements of the deep seabed mining regime are contrary to US needs and philosophy and must be renegotiated. Because of the current LOS negotiating situation in which virtually all nations, including our industrial allies, favor the finalizing of a comprehensive treaty, the Interdepartmental Group concludes that two basic policy options are currently available to the US:

(I) To withdraw from the LOS Conference prior to the next session (March 1982) because an acceptable deep seabeds regime is unattainable, and further negotiations on the existing text would reflect tacit acquiescence to the unrealistic goals of the LDCs.

(II) To continue the negotiations with the goal of improving the deep seabeds provisions while simultaneously safeguarding the in-place non-seabed provisions, particularly those which protect US military and commercial navigational freedoms.

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NSC review completed.

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An initial plan for the implementation of Option II, which is presented in the last section of the Memorandum, identifies a host of problems the US has with the deep seabed mining regime and offers alternative solutions. This examination is not exhaustive, but does present a broad range of sub-issues which must be used to develop negotiating strategies with our allies in preparation for the March 1982 session of the UN LOS Conference.

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3. Department Positions: Since abrupt withdrawal from the Conference carries with it the risk of uncertain political consequences, the fear of losing important navigational provisions, and negates our ability to improve the existing seabeds text, all the Departments, except Interior, favor Option II--continuing the negotiations. Interior thinks that Option II is too loosely worded and gives our negotiators too much leeway to drag the negotiations on and on.

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4. Recommendations: The Agency has already concurred at the Senior Interdepartmental Group Meeting on 24 November that the IG Memorandum to the President adequately reflects the findings of the LOS policy review and the policy choices available. These major points are broadly consistent with intelligence views on the issues.

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Should there be a NSC meeting on the LOS Memorandum, and you choose to indicate your preference as between Option I (withdrawal from the negotiations) and Option II (continuing to negotiate), you should bear in mind that most foreign governments participating in the negotiations covet US accession to the Treaty. Key states are willing to delay adoption of the Draft Convention until it is adjusted to meet some of the concerns of the United States. Therefore, the chances for modestly improving the deep seabed provisions seem good. The new National Intelligence Estimate on the Law of the Sea (copy attached) also points in the direction of continued US participation in the Conference. Among its major findings is the judgment that a successful treaty process is in the United States' interest whether or not it becomes a signatory. Continued US participation would help to prevent unraveling of the draft texts on navigation and would produce, at the minimum, limited beneficial changes in the seabed texts. Should the final Treaty, when the negotiations are completed, still not be satisfactory to the United States, the Government could still withhold signature and ratification, but the Treaty would then be a somewhat better document for safeguarding overall US oceans interests.

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Attachments:  
As stated

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OGI/GD:  (17Dec81)

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